

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>WINDSOR INDUSTRIES INC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Thomas L. Caradonna, Esq. Lewis, Rice &amp; Fingersh, L.C.</p> <p>Address: 500 North Broadway Suite 2000 St. Louis, Missouri 63102</p> <p>Phone Number: (314) 444-7600</p> <p>E-mail:</p> <p>Attorney Reg. No.:</p>	<p><b>Docket Number: 37716</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on January 29, 2002, Karen E. Hart and Judee Nuechter presiding. Petitioner was represented by Thomas L. Caradonna Esq., co-counsel with Kenneth S. Kramer, Esq. Respondent was represented by George Rosenberg, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**Personal Property  
(Arapahoe County Schedule No. 33590-19735-001)**

Petitioner is protesting the 2000 actual value of the subject property, business personal property located at 1351 W. Stanford Avenue, Englewood Colorado.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that their appraisal report considered all three approaches to value with the market and the cost approach most influential. There were 4,114 items of personal property valued and all but 5 of those items are valued on the market approach. The cost approach was used for the remaining 5 items as there was insufficient market data for those items.

### **Respondent:**

Respondent contends that all three approaches to value were considered, but the cost approach was the most accurate for the subject personal property. The assigned value was determined by applying Division of Property Taxation guidelines, which are binding on all Colorado Assessors.

## **FINDINGS OF FACT:**

1. Petitioner's witness, Mr. Leslie H. Miles, Jr., ASA, CEA, of Dallas, Texas, an appraiser with MB Valuation Services, Inc, presented the following indicator of value:

Market/Cost Combination:                      \$1,824,729.00

2. Mr. Miles testified that he physically inspected the property on April 19, 2001 and personally inspected the standard machine tools, the office furniture and equipment, and the rotational molding machines. He performed an audit and described each item of personal property.

3. The Petitioner's witness testified that the cost, the market and the income approach were considered in regards to their application in determining actual value. The market and the cost approach were indicated as the most reliable method of valuation of personal property. The subject property equipment is considered standard and is typically sold individually in the market.

4. Mr. Miles testified that he itemized each piece of property showing location, condition, description, and quantity, the valuation approach used, and the concluded value. He photographed the equipment and the tools for future reference in order to determine their condition. Each item is listed with its condition from observing the operation of the equipment and discussions with the operators and the maintenance supervisor. The condition of each item was coded and represented a specific condition between A and G. After the condition rating was complete, the analysis and conclusions were made.

5. Mr. Miles testified that he considered the highest and best use of each item and that a reasonable analysis of the value for each item in the marketplace was then determined.

6. The Petitioner's witness testified that he considered all three approaches to value and predominately applied the market approach to the majority of the equipment because there was a considerable amount of information available. He considered the cost approach for each item but applied the market approach when there was sufficient data. He testified that economic obsolescence must be considered to conclude a fair market value and that this factor has to indicate what the market would react to in order to reflect the market value. Economic obsolescence is market driven.

7. Mr. Miles testified that he obtains information on sales of like items by attending liquidation sales, information from dealers and manufacturers, and appraisals he has done. He then utilizes this information on comparable sales to reach a conclusion of value for the cost approach by determining adjustments and reasonableness.

8. Mr. Miles testified that the cost approach was utilized for 5 items including the rotational molding machines. Replacement cost new and not reproduction cost was utilized by Mr. Miles for those items with indexing not considered due to excess capital costs. He typically does not use the reproduction cost method. Mr. Miles checked with the manufacturer for current costs. The rotational molding machines are a swing-arm style and have design problems making them less efficient by up to 60 percent. Functional obsolescence was determined for these machines based on excessive operating expenses.

9. The Petitioner's witness testified that functional obsolescence is the main incentive to purchase new equipment. There is no functional obsolescence if there is no difference to operate used equipment as compared to a new item.

10. Mr. Miles testified that the data sources he utilized for the market approach and for the cost approach were included on page 17 of Petitioner's Exhibit A. The database maintained by MB Valuation Services, Inc. is similar to a library and is made up of books, public sales data, and database information obtained from dealers and manufacturers.

11. Under cross-examination, Mr. Miles testified that he is not familiar with Colorado Department of Taxation guidelines. He is familiar with the Uniform Standard of Professional Practice for appraisers and has taught this class in the past.

12. Under cross-examination, Mr. Miles testified that he did not look at the personal property declaration for the subject property that was filed by Windsor Industries. He was not given an asset list by the company. The property list in his appraisal report was based on a compilation of the property he itemized during his physical inspection in April, 2001 and retrospective to January 1, 2000. When Mr. Miles was on site at Windsor Industries he asked if the equipment was there on January 1, 2000 or if anything had been replaced subsequent to that date. He assumed the information given to him was correct. If any equipment was purchased after January 1, 2000 it is shown in his report with an asterisk and not a value. On May 25, 2001 Mr. Miles re-inspected the property and reviewed the appraisal data prior to the report being produced. Mr. Miles did not adjust the values of the property to June 30, 1998.

13. Mr. Miles testified under re-direct questioning that he did not rely on any liquidation sales for the valuation of the subject property, although they are included in his data base. Property sold at auction sales is considered the same as liquidation sales.

14. Under cross-examination, Mr. Miles testified that the molds are a part of the rotational molding machines that fit the swing-arm and are typically custom-made for each machine. They are considered proprietary products. He did not see any individual used or old molds during his inspection of the property and therefore they were not included in the asset list he compiled. Sometimes old molds are supplied by vendors and may be returned to them when manufacturing has been completed. The molds are used to make individualized covers for floor cleaning machines. The design of the molds can change. The only molds Mr. Miles valued were those that were a part of each rotational machine on site.

15. Mr. Miles testified that company depreciation schedules submitted to the county assessor's office do not always have all of the assets listed and that sometimes assets are listed but they are no longer there.

16. Mr. Miles testified under cross-examination that item #1509 is a vacuum former that was custom manufactured for the Petitioner. He utilized the sales comparison approach in his report for this item because it is considered standard equipment throughout the United States, although it may be individually designed for size. He knows what they sell for and can determine appropriate adjustments for size to determine value. He has many sales for this item although he did not bring any comparable sales with him to the hearing. He cannot verify the sales at this time because all of the information is in his office.

17. Under cross-examination, Mr. Miles testified that historical costs are typically indexed, not the original costs in utilizing the cost approach to market value. Indexes are published and the multipliers are then derived to be used in valuing property with the cost approach.

18. Upon questioning from the Board, Mr. Miles testified that he did not include installation charges or sales tax in the cost approach. He did include freight charges in this approach to value. Mr. Miles testified that market evidence does not support the addition of installation costs. He reiterated that the molds are proprietary products and that he did not value the property as of June 30, 1998.

19. In redirect, Mr. Miles testified that 20% should be added to his cost approach values to account for installation costs and sales tax.

20. Petitioner is requesting a 2000 actual value of \$1,824,729.00 for the subject property.

21. Respondent's witness, Mr. Sonny Osterberg, a Personal Property Appraiser with the Arapahoe County Assessor's Office, presented the following indicator of value:

Cost:	\$3,516,215.00
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22. The Respondent's witness testified that the Arapahoe County Assessor's Office received the Personal Property declaration for Windsor Industries on February 25, 2000 for the base year. There were no line-by-line items; the values were declared by category only. Petitioner presented another personal property declaration on December 27, 2001 to the Assessor's office and that is contained in the Respondent's appraisal report. Mr. Osterberg relied

on the itemized depreciation schedule presented in December in determining the value indicated in his report.

23. Mr. Osterberg testified that he made a physical inspection of the property on January 10, 2002 to determine the condition of the property and to list the various manufacturers of the equipment in order to obtain market information and costs on the used equipment. The subject machinery was very well maintained. He spot-checked the declaration list with the head of the maintenance department in all five buildings to see if the personal property declaration was accurate.

24. The Respondent's witness testified that during his inspection he saw the rotational molding machines and the vacuum molding machines with a huge racks of molds nearby. He asked about the molds and was told that they are normally maintained for approximately 10 years in case they may have to be reused. The maintenance personnel told him that some of the molds are very expensive. Mr. Osterberg believes that on January 1, 2000 the molds were present at the site. He believes that Windsor Industries owns these molds.

25. Mr. Osterberg testified that the effective appraisal date is June 30, 1998, for the base year 2000, which is mandated by the Division of Property Taxation manual.

26. The Respondent's witness presented the highest and best use of the subject property as current use.

27. The Respondent's witness testified that the income approach was considered for the subject but determined not appropriate for personal property valuation.

28. Mr. Osterberg testified that the market approach was also considered. Various manufacturers of similar equipment were contacted by the Respondent to get values on used equipment. He telephoned some of the Petitioner's referenced material sources and was told some of the sources sold only new equipment and some of the sources did only custom manufacturing. He also checked the internet for sales of similar used equipment and did not find any applicable sales. The Petitioner did not provide any cost figures in their Personal Property declaration. Mr. Osterberg was not able to get sufficient information on sales to meet the minimum Department of Taxation requirements and he could not conclude to a value using the market approach since reliable sources were not available.

29. Mr. Osterberg testified that he prepared a cost approach for tax year 2000. His Respondent's Exhibit 1, Tab A contains the declaration for personal property that was received from the Petitioner. The assets that are crossed off on the declaration were either at another location or were leased items. He prepared Respondent's Exhibit 1, Tab B as his worksheet which showed the assets identified by name or category, the original installed cost and the date of acquisition in order to compute a replacement cost new. All of the depreciation percentages in his report represent the percent good. Mr. Osterberg testified that it was difficult to reconcile the assets from the company personal property declaration to the appraisal report prepared by Mr. Miles.

30. Under cross-examination, Mr. Osterberg testified that he believed all of the assets were in place as of January 1, 2000. He did not conduct an item-by-item audit of the property to

verify the Petitioner's submitted information. His value worksheet is by category by the year of acquisition.

31. Mr. Osterberg testified under cross-examination that he used the "Average of All" rather than individual categories in determining the reproduction cost new factor for the subject property. He did not conduct an audit of all equipment but spot-checked and performed an overall condition analysis.

32. Under further cross-examination, the Respondent's witness testified that he extracted the non-personal property items such as software and related licenses from the Petitioner's personal property declaration before he prepared Respondent's Exhibit 1, Tab B. Computers received a different reproduction cost new factor since they typically experience rapid functional obsolescence. The telephone equipment was also considered similar to computers since they were computerized. He also testified that he did not use the #3 office category as shown in Respondent's Exhibit 1, Tab C for office equipment and furniture for developing a reproduction cost new factor in his worksheet. Instead he used a #1 "Average of All" rating since the subject company is classified as a manufacturing company and not an office. The Cost Factor Table for the various categories was referenced from Marshall & Swift, October 1999.

33. Mr. Osterberg testified that there were 3 rotational molding machines at the plant on the date of his inspection, yet the Petitioner only identified one machine on their asset list. He also testified that he relied on the Petitioner's list that they submitted to determine which molds were present on January 1, 2000. He does not value intangibles; he does not know if there were any intangibles included in the mold values. The molds were assigned a three-year life as recommended by the Division of Taxation Manual.

34. Under redirect, Mr. Osterberg testified that the personal property declaration schedule for Windsor Industries was filed under penalty of perjury. Colorado law requires June 30, 1998 as the date to be used in determining the level of value for the subject property. He agreed that if properly applied, the market approach gives the best indicator of value, but the sales must be verified and adjusted properly.

35. Under re-cross examination, Mr. Osterberg testified that the value of the molds would be the cost to obtain the molds. The value concept includes a willing buyer for the molds. He believes that the value of the molds is the issue at hand and that the value of the molds to Windsor Industries is more than to anyone else. Windsor Industries is the market for the molds.

36. Respondent assigned an actual value of \$3,919,267.00 to the subject property for tax year 2000, but is recommending a reduction in value to \$3,516,215.00.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2000. Both parties presented well-organized appraisal reports, though each report had certain deficiencies which the Board will attempt to reconcile.

2. The Board finds that the Petitioner's asset listing as presented at this hearing is more complete than the information supplied to Respondent, due to Mr. Miles' physical audit of Petitioner's personal property. The Respondent relied on reported information from the Petitioner and rightfully expected the supplied information to be accurate, as it was reported under penalty of perjury. Although Respondent did conduct a physical inspection of the subject property, no asset list was compiled; only a spot-check of the submitted property listing was made. Petitioner's inspection was not conducted until April 19, 2001. However, Mr. Mile's testimony was that the inventory listing was correlated to January 1, 2000 by identifying any equipment that was purchased or disposed of after the assessment date. The Board was convinced that Mr. Miles' asset listing more accurately reflected what items were in place as of the assessment date, with the exception of the molds.

3. Colorado law requires the consideration of all three approaches to value for the establishment of actual value. Both parties testified that they considered all three approaches to value, and both parties agreed that the income approach would not be the best indicator of value for the subject property. Mr. Miles documented which valuation approach was used for valuing each item in his report. He gave the most weight to the market approach for the majority of the items, with 5 items valued according to the cost approach. Respondent's witness, Mr. Osterberg, chose to rely on the cost approach, testifying that there was an insufficient amount of data available to determine an accurate market approach. The Board was most persuaded by Petitioner's witness for those items value via the market approach.

4. Mr. Miles' valuation was effective as of January 1, 2000, using sales that occurred prior to the assessment date with proper verification. The Board was convinced by the methodology testimony of Mr. Miles that sufficient information had been gathered and that the market approach had been properly applied. Although Mr. Miles testified that he did not calculate a value as of the level of value date of June 30, 1998, the Board is confident that Mr. Miles' valuation estimate accurately reflects the subject property market value for purposes of this appeal. The Board was not convinced that the value of the personal property would vary significantly from June 30, 1998 to January 1, 2000.

5. Petitioner's witness chose to use the cost approach for 5 items that were lacking market information. Mr. Miles testified that only freight costs were included in his cost values. The Board believes that sales taxes and installation costs should also be included in the cost approach. The Board believes these costs would be part of a potential purchaser's consideration in this approach. In addition, the personal property declaration and the Division of Property Taxation ARL Volume 5 require that costs include shipping, taxes, and installation.

6. The Board also found reference to installation costs for personal property in C.R.S. 39-1-103(13)(a) and (b). This statute deals with, among other things, the maximum value for personal property being set by the cost approach when "...all costs incurred in the acquisition and installation of such property are fully and completely disclosed...". It would seem clear that installation costs were meant to be included in the original cost of items valued according to the cost approach.

7. The Board concluded that the cost values presented by Mr. Miles must be increased by a factor of 20% to account for the lack of sales tax and installation costs in his cost valuations.

8. Regarding the molds, the Board was convinced that the molds are taxable personal property. However, we do not believe that the cost approach as applied by Respondent accurately reflects an “actual” value of the property due to the proprietary nature of the molds. The molds have value to Windsor only so long as they may manufacture the products made from the molds for their customers. Their value is in use, not in exchange. We believe there would be little if any value to anyone else and therefore the molds would have little if any market value. We believe that the taxable value of the molds must reflect an economic obsolescence factor due to their proprietary nature and probable lack of secondary market value. Therefore, we believe that an economic obsolescence factor should be applied to Respondent’s cost value of the molds to reflect a remaining depreciated value of 15%, which is, in essence, a minimal salvage value.

9. Regarding the molding machines, although there was a question regarding the number of machines on site, the Board carefully reviewed the asset listing in Respondent’s exhibit as well as the Petitioner’s appraisal report and found that three machines were listed in Petitioner’s report. The Board feels confident that Petitioner accurately reported the correct number and value of the machines.

10. After careful consideration of all the evidence and testimony presented, the Board concluded that the subject personal property value should be reduced to \$2,567,987.00

**ORDER:**

Respondent is ordered to reduce the 2000 actual value of the subject personal property to \$2,567,987.00.

The Arapahoe County Assessor is directed to change his records accordingly.

**APPEAL:**

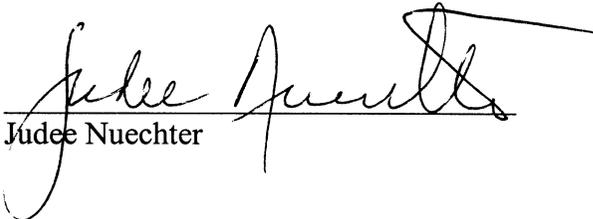
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 21<sup>st</sup> day of June, 2002.

**BOARD OF ASSESSMENT APPEALS**

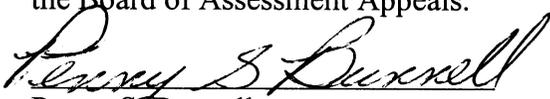
  
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Karen E. Hart

  
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Judee Nuechter

This decision was put on the record

**JUN 20 2002**

I hereby certify that this is a true  
and correct copy of the decision of  
the Board of Assessment Appeals.

  
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Penny S. Bunnell

